No. 2784

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

TSUIE SHEE et al.,
Appellants,

vs.

SAMUEL W. BACKUS,
as Commissioner, etc.,
Appellee.

APPELLANT'S PETITION FOR A REHEARING.

JOSEPH P. FALLON,
Hearst Building, San Francisco,
Attorney for Appellant and Petitioner.

Filed this.....day of August, 1917.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

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To the Honorable William B. Gilbert, Presiding Judge, and the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Appellant respectfully petitions that the decision of the Court herein be set aside and that a rehearing of the cause be granted.

The grounds for the application are:

First. That the unfairness manifested by the immigration officials in incorporating into the record on appeal to the Secretary of Labor, papers relative to other cases and which had nothing to

do with the appellant's case, which was never presented to the detained or her counsel, and which was manifestly incorporated for the purpose of prejudicing her case before the Secretary of Labor, seems not to have been fully considered by the Court.

Second. That the Court in considering that there was "some evidence" and sufficient to sustain the judgment of the lower Court evidently failed to note that the introduction of these papers, without giving the detained an opportunity of meeting them, precluded a fair and impartial hearing.

UNFAIRNESS.

The papers referred to are the records of the cases of Quan Kay, Chan Ngan Yuk and Quan Soo who arrived at the port of San Francisco about the same time as did the applicant.

We contend that the finding of papers in trunks and the introduction of reports of investigators should not carry any weight as evidence whatever, unless the papers were first presented to the detained or her counsel. In the instant case they were not so presented. It is the principle of allowing evidence to go into the record on appeal to the Secretary of Labor which is not presented to the detained's counsel that we are contending against. Unless this right is upheld no applicant can expect a fair and impartial hearing before the Department of Labor.

> "Rule 5, Subdivision 1 of the Rules governing the Admission of Chinese is as follows:
>
> If your conclusion of the hearing conducted in accordance with Rule 3 the officer in charge does not conclude that the applicant is admissible, counsel employed by the applicant or in his behalf shall be permitted to examine the record formulated at the hearing, and may be loaned a copy of the transcript of testimony contained therein. * * * The word 'record' as used in this paragraph shall not be construed to include memoranda of comment or letters of transmittal, unless they contain evidence additional to that in the record proper."

The papers referred to did contain evidence and were put there for the express purpose of prejudicing the appellant's case in the mind of the Secretary of Labor. It is not for the Court to determine just how much weight the said papers carried, or whether they carried any weight detrimental to the applicant in the mind of the Secretary of Labor; it is enough that they did contain some evidence and that they were presented to him without the detained or counsel being given an opportunity to reply.

For the foregoing reasons we earnestly and respectfully urge the Court to grant the petition for a rehearing.

Dated, San Francisco,
August 13, 1917.

Respectfully submitted,

Joseph P. Fallon,
Attorney for Appellant
and Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellant and petitioner in the above-entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition is not interposed for delay.

JOSEPH P. FALLON,
Counsel for Appellant
and Petitioner.